

**Amendment and Response**

Applicant: Timothy V. Stagg et al.

Serial No.: 09/728,697

Filed: December 1, 2000

Docket No.: 54186US017

Title: PLASTIC FILM PACKAGING WITH TEARABLE TAPE STRIP

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**REMARKS**

This Amendment is responsive to the Office Action mailed March 25, 2004. In that Office Action, the Examiner rejected claims 1, 2, 4-8, 10, 11, 13, 14, 17, 18, 20-24, 26, 27, 29, 30, 33, 35-39, 41, 42, 44-48, 51, and 52 under 35 U.S.C. §103(a) as being unpatentable over Underwood et al., U.S. Patent No. 3,179,326 ("Underwood") in view of Osborn, U.S. Patent No. 4,397,703 ("Osborn"). Claims 9 and 25 were rejected under 35 U.S.C. §103(a) as being unpatentable over Underwood in view of Osborn as applied to claims 1, 2, 4-8, 10, 11, 13, 14, 17, 18, 20-24, 26, 27, 29, 30, 33, 35-39, 41, 42, 44-48, 51, and 52 above, and further in view of Hodson et al., U.S. Patent No. 6,316,036 ("Hodson"). Claims 15, 16, 31, and 32 were rejected under 35 U.S.C. §103(a) as being unpatentable over Underwood in view of Osborn as applied to 1, 2, 4-8, 10, 11, 13, 14, 17, 18, 20-24, 26, 27, 29, 30, 35-39, 41, 42, 44-48, 51, and 52 above, and further in view of Kim, U.S. Patent No. 6,203,634 ("Kim"). Finally, claims 49 and 50 were rejected under 35 U.S.C. §103(a) as being unpatentable over Underwood in view of Osborn as applied to 1, 2, 4-8, 10, 11, 13, 14, 17, 18, 20-24, 26, 27, 29, 30, 35-39, 41, 42, 44-48, 51, and 52 above, and further in view of Zurawski et al., U.S. Patent No. 5,885,630 ("Zurawski").

With this Response, claims 1, 17, and 38 have been amended, and claim 56 added. Claims 10 and 26 have been cancelled. Claims 1, 2, 4-9, 11, 13-18, 20-25, 27, 29-33, 35-39, 41, 42, 44-52, and 56 remain pending in the application and are presented for reconsideration and allowance.

**35 U.S.C. §103 Rejections**

Independent claims 1, 17, and 38 were rejected under 35 U.S.C. §103(a) as being unpatentable over Underwood in view of Osborn. Each of the independent claims includes similar limitations to claim 1, which recites a packaging including a continuous, tear-resistant film and a tearable tape strip secured to the film. The continuous, tear-resistant film is formable to define a region for containing an article and is characterized by puncture propagation tear-resistance of at least 20 N/ply. The tearable strip is configured to controllably tear an opening through the film for accessing the enclosed region upon tearing of the tearable tape strip. The tearable tape strip is defined by opposing, longitudinal edges and a central section, the central

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section being tearable, relative to the opposing, longitudinal edges such that the tearable tape strip is internally tearable. With this Response, each of the independent claims, 1, 17, and 38 has been amended. In particular, each independent claim further recites that the tearable tape strip comprises one of reinforced strapping tape and filament reinforced tape. Neither Underwood nor Osborn teach or otherwise suggest such a limitation.

Underwood discloses a uniaxially oriented crystalline polyolefin film for use as a heat sealable tear tape for thermoplastic wrapping films. (Col. 1, lines 10-14). Underwood does not teach or suggest that the **tearable tape strip comprises one of reinforced strapping tape and filament reinforced tape**. Osborn discloses a method and apparatus for manufacture of laminated reinforced film. (See abstract). Osborn does not relate to tearable tape. As such, it is respectfully submitted that the above rejections under 35 U.S.C. §103(a) have been traversed, and claims 1, 17, and 38 are in condition for allowance.

Additionally, it is noted that while the Osborn does appear to describe a 6 Mil LDPE commercial bag having a PPT of 11 lbs and a 9 mil commercial bag having a PPT of 22 lbs, the PPT test described in Osborn does not appear to conform to the current ASTM D2582 recited in the specification of the pending application, such that the Osborn PPT values cannot be compared against the claimed PPT values. In particular, ASTM D2582 requires SI units; Osborn clearly does not utilize SI units. This is not surprising as Osborn was filed in 1981, long before the current ASTM D2582 standard was promulgated. Further, Osborn describes using a one-pound sharp projection (col. 19, line 20), as compared to the 1195 gram carriage weight as set forth in the specification (page 16, lines 6-8), in performing the PPT evaluation. These differences are such that Osborn cannot be viewed as adequately teaching the limitations of claims 1, 17, and 38. Further, Osborn relates to commercial sacks used to store bulk materials such as grain, peat moss, etc., in 25 – 100 pound lots (col. 1, lines 15-20). Clearly, the materials are loosely contained within the Osborn sacks. Further, the Osborn sacks are provided with seams that facilitate opening thereof. Conversely, Underwood relates to a packaging film that is tightly wrapped about an article (e.g., Figures 2 and 3 of Underwood). One seeking to select a material for tightly wrapping about an article would not look to seam-openable sacks that loosely contain flowable material. Further, the prior art can be modified or combined only so long as

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there is a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 2315 USPQ 375 (Fed. Cir. 1986). The packaging materials contemplated by Underwood are apparently comparable to cellophane otherwise used to package cigarettes (the material Underwood seeks to replace). In contrast, the Osborn sack materials are highly tough, capable of maintaining its integrity while containing in upwards of 100 pounds of grain when dropped from heights of greater than 5 feet. A requisite reasonable expectation of success thus does not exist as one would not reasonably expect a tear tape for tearing material akin to cellophane (i.e., the Underwood tear tape) to remain sealed to and properly tear the highly tough commercial sack material referenced in Osborn. Thus, a requisite suggestion to modify Underwood in view of Osborn does not exist, further traversing the Examiner's rejections of independent claims 1, 17, and 38.

Dependent claims 2, 4-9, 11, 13-16, 18, 20-25, 27, 29-33, 35-37, 39, 41, 42, and 44-52 were rejected under 35 U.S.C. §103(a) as being unpatentable over Underwood in view of Osborn or under Underwood in view of Osborn in further view of Hodson, Kim, or Zurawski. Dependent claims 2, 4-9, 11, 13-16, 18, 20-25, 27, 29-33, 35-37, 39, 41, 42, and 44-52 depend directly or indirectly upon independent claims 1, 17, or 38. Accordingly, dependent claims 2, 4-9, 11, 13-16, 18, 20-25, 27, 29-33, 35-37, 39, 41, 42, and 44-52 are also allowable over the cited references. Further, it is noted that dependent claims 35-37 and 51 were rejected over Underwood in view of Osborn, and claims 49 and 50 were rejected over Underwood in view of Osborn and Zurawski. Each of claim 35-37 and 49-51 relate to a close relationship between the packaging/film and the article being packaged. For example, claim 36 recites that the package substantially conforms to the shape of the article. In contrast, Osborn teaches a sack that loosely contains material. Thus, even if a requisite suggestion to modify Underwood in view of Osborn could be identified, the resultant packaged good article would include the commercial sack described by Osborn to which the tear tape of Underwood was applied. The commercial sack would loosely contain the article. Nothing in either reference teaches the ability to tightly wrap an article using the Osborn commercial sack material, dictating that the resultant combination cannot render the additional limitations of claims 35-37 and 49-51 obvious.

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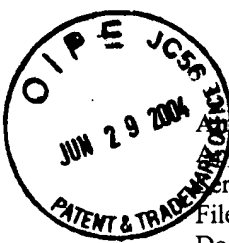
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Finally, newly presented claim 56 depends from claim 33, and thus, for at least the reasons described above, recites allowable subject matter. Additionally, claim 56 recites that the packaging film directly contacts the food product. Support for this limitation is found, for example, at page 24, lines 9-19. In rejecting claim 33, the Examiner has referenced Underwood's teaching of chewing gum package outerwrap. However, in addition to the outerwrap, individual pieces of chewing gum are packaged within foil and/or paper, such that the outerwrap is not in direct contact with the chewing gum food product. Thus, claim 56 recites additionally allowable subject matter.

**Allowable Subject Matter**

In light of the above, it is believed that independent claims 1, 17, and 38, and the claims depending therefrom, are in condition for allowance. Allowance of these claims is respectfully requested.



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**CONCLUSION**

No fees are required under 37 C.F.R. 1.16(b)(c). However, if such fees are required, the Patent Office is hereby authorized to charge Deposit Account No. 50-0471.

The Examiner is invited to contact the Applicant's Representative at the below-listed telephone number if there are any questions regarding this response.

Respectfully submitted,

Timothy V. Stagg et al.,

By their attorneys,

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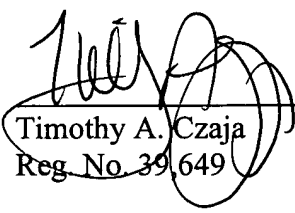
100 South Fifth Street

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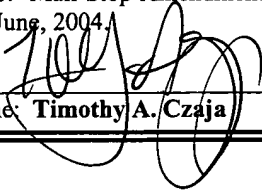
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Date: JUN 25, 2004  
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Timothy A. Czaja  
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**CERTIFICATE UNDER 37 C.F.R. 1.8:**

The undersigned hereby certifies that this paper or papers, as described herein, are being deposited in the United States Postal Service, as first class mail, in an envelope address to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 25<sup>th</sup> day of June, 2004.

By   
Name: Timothy A. Czaja